

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/11/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.5201 OF 2002

and

W.P.M.P.NO.7306 OF 2002

K.R.Ramalingam,
Branch Manager,
Tamil Nadu Transport Corporation
Ambur Depot,
Vellore District. .. Petitioner

-Vs-

1. The State of Tamil Nadu rep. by
The Secretary for Transport Department,
Chennai-9.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division II,
Vellore-9. .. Respondents

Writ Petition under Article 226 of the Constitution of India praying
for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner: : Mr. R.Margabandhu

For Respondents: : Ms.V.Velumani for R1
Mr.L.G.Sahadevan for R2.

:O R D E R

This Writ Petition has been filed by the petitioner praying to issue a
Writ of Certiorarified Mandamus to call for the records from the second
respondent in his proceedings dated 6.8.1993, 27.8.1993,30.8.19 93, 5.10.1993,
29.10.1993 and quash the same and direct the respondents to promote the
petitioner as Selection Grade Assistant Manager on time bound scale with
effects from 10.4.1993 with back wages.

2. In the affidavit filed in support of the above writ petition,
petitioner would submit that he was working as Branch Manager in Gudiyatham
Depot from 1992-1993; that during that period 9 charge memos. were issued by
the General Manager and explanations were called for and the same was

submitted, but no domestic enquiry was conducted; that the General Manager without giving an opportunity and without conducting enquiry passed an order (1) dated 6.8.1993 stoppage of increment for 6 months without cumulative effect; (2) dated 27.8.1993 stoppage of increment for 3 months without cumulative effect; (3) dated 27.8.1993 stoppage of increment for 6 months without cumulative effect; (4) dated 27.8.1993 stoppage of increment for 12 months without cumulative effect; (5) dated 20.8.1993 stoppage of increment for 3 months without cumulative effect; (6) dated 5.10.1993 stoppage of increment for 6 months without cumulative effect; (7) dated 5.10.1993 stoppage of increment for 3 months without cumulative effect; (8) dated 29.10.1993 stoppage of increment for 12 months without cumulative effect; (9) dated 28.11.1993 stoppage of increment for 6 months without cumulative effect; that as per the Corporation Standing Rules 3(A), the Managing Director is the competent authority for punishing the Assistant Manager Grade Officer; that the General Manager of the Corporation who is not a competent authority had awarded the aforesaid major penalties.

3. The petitioner would further submit that he preferred an appeal before the Managing Director against the order passed by General Manager and requested him to cancel the punishment and to promote him as Selection Grade Assistant Manager; that the same was not considered by the second respondent; that he preferred an appeal to the competent authority viz., the Finance Committee on 1.6.1998; that the said Finance Committee rejected his appeal by a non-speaking order, on the ground of limitation without giving opportunity for the petitioner to explain his case and without going into the merits of the case, which is against the principles of natural justice.

4. The petitioner would further submit that he was promoted as Assistant Manager with effect from 10.4.1987 as per G.Lr.NO.11118-DOI-96, Transport Department dated 20.1.1998 following the earlier Government Orders; that the Assistant Managers of Transport are eligible to be promoted as Selection Grade Manager on completion of 6 years of qualifying services subject to passing of I.R.T. Tests and of obtaining heavy transport vehicle licence; that he has completed 6 years of service even on 10.4.1993 itself and has passed I.R.T. Test and is holding H T C Licence; that even before the date of award of punishment he was qualified for promotion of Selection Grade Assistant Manager on time bound scale.

5. Heard the learned counsel for the petitioner and the respondents as well and the materials placed on record have also been perused.

6. During arguments the learned counsel for the petitioner would submit that as per the Corporation Standing Rules 3(a), the Managing Director is the competent authority for punishing the Assistant Manager Grade Officer; that the General Manager of the Corporation who is not a competent authority had awarded the aforesaid major penalties. At this juncture, the learned counsel for the petitioner would cite the following Service Rules of the Respondents: Rule 6 of the General Rules of the respondents reads: "No person other than the Competent Authority prescribed under these rules shall exercise or no person other than the Managing Director shall sub-delegate powers under these rules without the general or specific orders of the Board."

Rule 6(1) of the Discipline and Appeal Rules of the Respondent reads:

"(1) No order imposing any of the major penalties specified in (d),(e), (f), (g), (h) and (i) of Rule 4(1) shall be made except after an

enquiry is held as far as may be in accordance with these rules.

Rule 4(1)(d) in respect of Major Penalties reads:

(d) Withholding of increments of Pay with or without cumulative effect.

Rule 5 Discriminately Authority:-

(1) The Competent Authority or the Discriminately Authority, as specified in the Schedule, may impose any of the penalties specified in Rule 4 on any employee, provided that the authority which may impose any of the major penalties specified in (f),(g), (h) and (i) of Rule 4 (1) shall be the Appointing Authority or any higher authority.

(2) Without prejudice to the provisions in clause (1), any of the penalties specified in Rule 4 may be imposed on any employee by the Appointing Authority or any higher authority subject to such conditions and limitations, if any, as may be specified.

SCHEDULE

(REFERRED TO IN RULE 3(a))

S. Grade Disciplinary Authority Penalty the Appellate No. /Competent Authority Disciplinary Authority
Authority
can impose

(1) (2) (3) (4) (5)

-----EMPLOYEES IN
MANAGERIAL GRADE

1.(a) Manager's Managing i) Minor penalties Appointment
Grade. Director & Committee/
Staff Select-

ion Committee

ii) Major penalties Board.

(b) Deputy -do- i) Minor penalties Appointment
Manager's & Committee/
Grade. Staff Select-

ion Committee ii)
Major penalties Appointment

Committee/

Staff

Select-

ion Committee

(c)Asst.Manager's ` Grade i) Minor Penalties Appointment
Committee/

-do- & Staff Select
on Committee

ii Major Penalties Appointment

Committee/ Staff

Select-

ion

7. The learned counsel for the petitioner would further submit that he has completed 6 years of service even on 10.4.1993 itself and has passed I.R.T. Test and holding is H T C Licence; that even before the date of award of punishment he was qualified for promotion of Selection under these rules without the general or specific orders of the Board."

Rule 6(1) of the Discipline and Appeal Rules of the respondent reads:

"(1) No order imposing any of the major penalties specified in (d), (e), (f), (g), (h), and (i) of Rule (4) shall be made except after an enquiry is held as far as may be in accordance with these rules.

Rule 4(1)(d) in respect of Major Penalties reads:

(d) Withholding of increments of pay with or without cumulative effect.

Rule 5 Disciplinary Authority:-

(1) The Competent Authority or the Disciplinary Authority, as specified in the Schedule, may impose any of the penalties specified in Rule on any employee, provided that the authority which may impose any of the major penalties specified in (f), (g), (h) and (i) of Rule (4) shall be the Appointing Authority or any higher authority.

(2) Without prejudice to the provisions in clause (1), any of the penalties specified in Rule 4 may be imposed on any employee by the Appointing Authority or any higher authority subject to such conditions and limitations, if any, as may be specified.

Grade Assistant Manager on time bound scale, but his representation for promotion was not considered till date; that there cannot be two punishments for single offence; that two persons viz., Kuppusamy and N.J.Srinivasan who were also appointed along with the petitioner were promoted as Selection Grade Assistant Manager on time bound scale; that the respondent herein acted discriminately with ulterior motive; that he was not deserved to be punished for such vague charges; that even so, that was after 10.4.1993 only, on which date he was qualified for promotion; that he is entitled to receive the back wages with cumulative effect from 10.4.1993 onwards on Selection Grade Manager on time bound scale till date. On such arguments, he would pray for the relief extracted supra.

8. The learned counsel appearing on behalf of the respondents would submit that against the punishment given by the General Manager in the year 1993, the petitioner preferred appeal only on 1.6.1998, which is after 5 years and the same was rejected by the appellate authority on 12.1.1999 on the ground of limitation; that he filed the above Writ Petition only in the year 2001, i.e. after two years from the date of rejection of appeal by the Appellate Authority and hence he would pray for dismissal of the above writ petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondents as well, what this court is able to assess is

that 9 charge memos have been served on the petitioner in quick succession respectively dated 6.8.1993, 27.8.1993, 27.8.1993, 27.8.1993, 30.8.1993, 5.10.1993, 5.10.1993, 29.10.1993 and 29.10.1993 and explanations have been called for and though not at the initial stage it comes to be seen from the orders of the 2nd respondent dated 6.8.1993 prior to passing of the final order for all the charge memos, explanations have been offered on the part of the petitioner and admittedly without conducting any domestic enquiry so as to afford sufficient and reasonable grounds for the delinquent to answer and stoutly deny the delinquency brought forth against him. As per the charge memos the final orders have been passed in all the matters concerned with all the 9 charge memos inflicting the punishments thereon. Consequent to the award of punishments which are either stoppage of increments for six months or for three months and without cumulative effect, the promotion of the petitioner as Selection Grade Assistant Manager has been denied and hence the petitioner has not only come forward to pray for issue of a writ of certiorarified mandamus calling for the records from the 2nd respondent in his proceedings dated 6.8.1993, 27.8.1993, 27.8.1993, 27.8.1993, 30.8.1993, 5.10.1993, 5.10.1993, 29.10.1993 and 29.10.1993 and quash the same and to direct the 2nd respondent to promote the petitioner as Selection Grade Assistant Manager with effects from 10.4.1993 with backwages and other benefits.

10. On the part of the respondents it would be claimed that all the charges were very serious and major they attract major penalties in character. However, the same would be cleaned by the petitioner as petty charges and minor in character. The petitioner's argument is that if they are major charges definitely there should have been a domestic enquiry held following all the rules and procedures established under law, but no such domestic enquiry has been conducted in cases connected with all the 9 charges and only calling for the explanations straightaway punishments have been ordered and the same is unknown to law relating to disciplinary proceedings of any management. The petitioner would further submit that consequent to the defective proceedings initiated against the petitioner on petty charges without any truth attached to the same he was denied of his due promotion. All his appeals submitted before the 2nd respondent and other authorities have not been properly dealt with on merits and in accordance with law, but only slipshod and non-speaking orders have been passed.

11. The petitioner would further submit as per the Rule 3(a) of the Standing Rules, the Managing Director is the competent authority and the punishing authority for the category of those, such as the Assistant Managers and since the petitioner admittedly being an Assistant Manager, the disciplinary proceedings should hence been dealt with only by the Managing Director, whereas contrary to the rules and procedures established under law, the General Manager of the Corporation, who is not a competent authority to award major penalty without conducting any domestic enquiry is quite illegal. He would further argue that even the appellate authorities have never looked into reasons, not discussed the merits to decide the case of the petitioner, but on the ground of limitation alone his appeals have been dismissed by the second respondent Managing Director and the Committee and therefore left with no choice the petitioner has come forward to file the above writ petition

seeking the relief extracted supra.

12. A careful perusal of the charge memos and as to how they have been dealt with and decided so as to inflict the punishments of major penalties without even conducting any domestic enquiry would clearly reveal that nothing has been either proceeded with or concluded particularly in the event of punishing the delinquent in the manner proceeded under law or in adhering to the rules and procedures by the authorities concerned.

13. For instance, as rightly pointed out on the part of the petitioner Rule 3(a) of the Schedule of Rules which stipulates specifications such as the disciplinary/competent authority for the Grade of Officers particularly for the employees in managerial grade in respect of the penalties whether it is the Managers' Grade or Deputy Managers' Grade or even Assistant Managers' Grade, it is pertinent to note that the General Manager who has passed the orders in the cases of inflicting punishment to the petitioner, who is not at all competent authority empowered under those rule and therefore no doubt basically in all the 9 charges issued to the petitioner as per the charge memos, it has not been dealt with by the appropriate competent authority as stipulated under the rules and at this stage itself, the case of the 2nd respondent proceedings against the petitioner falls to the ground.

14. On the part of the respondents they would deny vehemently the allegations levelled by the petitioner on the only ground on which the second respondent would come forward to resist the writ petition is that the appellate authorities dismissed his appeals on grounds of limitation and therefore the writ petition has been filed by the petitioner thereafter that too with a delay and therefore this writ petition cannot also be ordered as prayed for and becomes liable to be dismissed.

15. At this juncture it needs to be mentioned that the order of the appellate authority which is a one sentence order without having any discussion on the merit of the case and in dismissing the same is highly belated without even explaining as to how and in what manner and to what extent the delay has occurred. It is still pathetic to note that no opportunity has been given for the appellant/petitioner herein to be heard and the appeal had been dismissed as an administrative order, which is highly deplorable.

16. In short, nothing in the whole of the appeal process either inflicting the punishment on the petitioner pursuant to the charge memos or denying the petitioner's promotion has been legally dealt with and ordered for conducting domestic enquiry in the manner provided for and under law and deciding the same as it has been decided is a glaring case of flouting the procedures with no opportunity for the petitioner to be heard whether it is at the enquiry stage or appellate stage thus in violation of the principles of natural justice. Moreover, even the charges framed against the petitioner have been on petty grounds and any in a hurried manner and in quick succession all the 9 charges have been framed within a couple of months under doubtful circumstances so as to permit the court to think that only if the authorities dispose of the petition, no such charge could be brought forth nor any punishment inflicted without an enquiry being held at all, much less by an authority, who is not competent to act as disciplinary authority and therefore

absolutely without application of the Discipline and Appeal Rules, since these charges have been framed and punishments inflicted consequent to which the petitioner has been denied of his due promotions as the Selection Grade Assistant Manager and hence it has become highly necessary on the part of this court to order the writ petition as prayed for and hence the following order.

In result,

- (i) the above writ petition stands allowed;
- (ii) the proceedings of the second respondent dated 6.8.1993, 2 7.8.1993, 27.8.1993, 27.8.1993, 30.8.1993, 5.10.1993, 5.10.1993, 29.10.1993 and 29.10.1993 are hereby quashed and the orders passed by the Appellate Authority dated 01.6.1998 and the Disciplinary Authority dated 21.8.1998 as well are set aside;
- (iii) the 2nd respondent is directed to promote the petitioner as Selection Grade Assistant Manager on time bound scale with effects from 10.04.1993 with all back wages and other benefits; and
- (iv) Consequently, the connected W.P.M.P.NO.7306 of 2002 is closed.

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Index:Yes

Website:Yes

Copy to:-

1. The Secretary for Transport Department,
State of Tamil Nadu rep. by
Chennai-9.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division II,
Vellore-9.

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